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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/633,476	08/07/2000	Mark C. Terranova	5181-60700	4639

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EXAMINER	
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ART UNIT	**PAPER NUMBER**
2155	

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13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/633,476	TERRANOVA ET AL.	
	Examiner	Art Unit	
	Benjamin R Bruckart	2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 April 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Detailed Action

Status of Claims:

Claims 1-24 are pending in this Office Action.

Response to Arguments

In view of the Appeal Brief filed in paper 12 on April 16, 2004, PROSECUTION IS HEREBY REOPENED. New grounds for rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Applicant's invention as claimed:

Claim 1-2, 4, 7-8, 10, 14-16, 18, 21, 24 are rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent No 6,154,744 by Kenner et al in view of U.S. Patent No 6,243,832 by Eckes et al.

With regards to claim 1, the Kenner reference teaches a system comprising:

a server (Kenner: col. 5, lines 44-50);

a first client coupled to said server (Kenner: col. 5, lines 44-50; Figure 1, tags 12, 16, 20); wherein said server is configured to login a first user and a second user (Kenner: col. 9, lines 40-45; login; first user is Figure 1, tag 12; second user is Figure 1, tag 16),

wherein said first instance of said test program is configured to cause a first access to a first file on said server (Kenner: col. 10, lines 46-53), wherein said second instance of said test program is configured to cause a second access to a second file on said server (Kenner: col. 10, lines 46-53), wherein said first client is configured to store a first latency value associated with said first access, wherein said first client is configured to store a second latency value associated with said second access (Kenner: col. 5, lines 30-34; col. 9, line 60 – col. 10, line 2; col. 11, lines 15-54; delay times).

The Kenner reference does not explicitly state a client with two users running concurrently on it.

The Eckes reference teaches a first client is configured to execute a first instance of a test program by said first user and a second instance of said test program by said second user substantially concurrently (Eckes: col. 3, lines 24-26; client computer is the test computer system and the users are concurrent users simulated processes),

The Eckes reference further teaches the system tests network access servers with likely usage patterns under high stress to ensure reliability (Eckes: col. 3, lines 8-11; col. 2, lines 39-43).

Therefore if would have been obvious to a person of ordinary skill in the art at the time the invention was made to implement the system of testing accesses on a server with concurrent users for latency values as taught by Kenner while employing first and second instances of the test program running on a client as taught by Eckes in order to test network access servers under stress with likely usage patterns to ensure reliability (Eckes: col. 3, lines 8-11; col. 2, lines 39-43).

Claims 2, 4 are rejected under the same rationale give above. In the rejections set fourth, the examiner will address the additional limitations and point to the relevant teachings of Kenner et al and Eckes et al.

With regards to claim 2, a system related to claim 1, wherein said server is configured to verify that said first user has permission to access said first file in response to said first access (Kenner: col. 9, 40-44; Eckes: col. 10, lines 58-62).

With regards to claim 4, a system related to claim 1, wherein said first user corresponds to a first user type, and wherein said second user corresponds to a second user type (Eckes: col. 13, lines 7-11; Kenner: col. 11, lines 15-23 teaches downloading different sized files to test col. 32-43).

With regards to claim 7, the system related to claim 1, further comprising a second client coupled to said server (Kenner: Figure 1; tag 20); wherein said server is configured to login a third user (Kenner: col. 6, line 63- col. 7, line 6; concurrent users unlimited), wherein said second client is configured to execute a third instance of said test program by said third user substantially concurrently with initiating said first instance of said second instance (Kenner: col. 5, 23; col. 7, lines 3-6), wherein said third instance of said test program is configured to cause a third

access to a third file on said server (Kenner: col. 10, lines 46-53), and wherein said second client is configured to store a third latency value associated with said third access (Kenner: col. 5, lines 30-34; col. 9, line 60 – col. 10, line 2; col. 11, lines 15-54; delay times).

With regards to claim 8, the system related to claim 7, wherein said server is configured to verify that said third user has permission to access said third file (Kenner: col. 9, lines 40-44; Eckes: col. 10, lines 58-62).

With regards to claim 10, the system related to claim 1, wherein said server is configured to login said first user using a first operating system protocol (Kenner: col. 8, lines 5-10; col. 1, line 42; col. 4, line 51; col. 12, line 3), and wherein said server is configured to login said second user using a second operating system protocol (Kenner: col. 8, lines 5-10; col. 1, line 42; col. 4, line 51; col. 12, line 3).

With regards to claim 14, the system related to claim 1, wherein said first access comprises a first read access or a first write access, and wherein second access comprises a second read access or a second write access (Kenner: col. 3, 28-33).

The examiner finds the claims 1, 15; 2, 16; 4, 18; 10, 21; 14, 24 to be synonymous in intention. While the examiner recognizes the distinction between a system and a method, the examiner relates these to the code, the functions, and medium for which the code works. Therefore claims 15, 16, 18, 21, 24 are also rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,154,744 by Kenner et al.

Claims 3, 9, 11, 12, and 13 are rejected under 35 U. S. C. 103(a) which forms the basis for all obvious as being unpatentable over U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No 6,243,832 by Eckes et al in further view of U.S. Patent No. 6,560,648 by Dunn et al.

The Kenner and Eckes references disclose a set of programs run within the configuration utility to determine the latency of the network.

The Kenner reference indicates ping and trace-route programs are used in this manner but does not clearly state how the data is processed to produce results.

The Dunn reference discloses that using a ping command could approximate a total time for a token message to travel round-trip across the network (Dunn: col. 1, lines 38-46).

The Dunn reference further teaches that ping commands are high priority, small size messages that travel quickly through routers (Dunn: col. 2, lines 6-8) allowing to measure message communication latency across a network (Dunn: col. 2, lines 49, 50).

Therefore if would have been obvious to a person of ordinary skill in the art at the time the invention was made to implement the system taught by Kenner and Eckes with specific uses of the PING command as taught by Dunn to measure the network latency.

Claims 3, 9, 11, 12 and 13 are rejected under the same rationale give above. In the rejections set fourth, the examiner will address the additional limitations and point to the relevant teachings of Kenner et al, Eckes et al, and Dunn et al.

With regards to claim 3, a system related to claim 2, wherein said first latency value represents a first time portion corresponding to said first access and a second time portion corresponding to said server verifying said first user has permission to access said first file (Dunn: col. 1, lines 38-46).

With regards to claim 9, the system of claim 8, wherein said third latency value represents a first time portion corresponding to said third access and a second time portion corresponding to said server verifying said third user has permission to access a third file (Dunn: col. 1, lines 38-46).

With regards to claim 11, the system related to claim 1, wherein said server is configured to convey a first token to said first client in response to logging in said first user, and wherein said server is configured to convey a second token to said first client in response to logging in said second user (Dunn: col. 1, lines 52-56).

With regards to claim 12, the system related to claim 11, wherein said server is configured to verify that said first user has permission to access said first file in response to said first access using said first token, and wherein said server is configured to verify that said second user has permission to access said second file in response to said second access using said second token (Dunn: col. 1, lines 52-56).

With regards to claim 13, a system related to claim 1, wherein said first instance of said test program is configured to cause a third access to a third file on said server, wherein said second instance of said test program is configured to cause a fourth access to a fourth file on said server, wherein said first client is configured to store a third latency value associated with said third access, and wherein said second client is configured to store a fourth latency value associated with said fourth access (Dunn: col. 1, lines 38-46).

Claim 5 is are rejected under 35 U. S. C. 103(a) which forms the basis for all obvious as being unpatentable over U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No 6,243,832 by Eckes et al in further view of U.S. Patent No. 5,485,606 by Midgdey et al.

The Kenner and Eckes references disclose a system of network latency tests that will test connectivity and load of a server and verify a user, then allow access to a file.

The Kenner reference does not explicitly explain file manipulation or directory access for a user.

Midgdey reference teaches a system related to claim 4 (Midgdey: abstract), wherein server is configured to create a first directory for said first user (Midgdey: col. 7, lines 27-39), wherein said server is configured to populate said first directory with a first plurality of files according to said first user type (Eckes: col. 13, lines 7-11), wherein said first plurality of files includes said first file (Midgdey: col. 9, line 62 – col. 10, line 12), wherein server is configured to create a second directory for said second user (Midgdey: col. 7, lines 27-39), wherein said server is configured to populate said second directory with a second plurality of files according to said second user type (Eckes: col. 13, lines 7-11), and wherein said second plurality of files includes said second file (Midgdey: col. 9, line 62 – col. 10, line 12).

The Midgdey reference further teaches that this method of file backup and restoration is usable with any operating system (Midgdey: col. 2, lines 7-11).

Therefore if would have been obvious to a person of ordinary skill in the art at the time the invention was made to implement the system taught by Kenner et al and Eckes et al with directory creation and file population techniques as taught by Dunn to create test directories that can be restore on any operating system to be test.

Claim 6 is are rejected under 35 U. S. C. 103(a) which forms the basis for all obvious as being unpatentable over U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No 6,243,832 by Eckes et al in further view of U.S. Patent No. 5,485,606 by Midgdey et al in further view of U. S. Patent No. 6,138,112 by Slutz.

The Kenner and Eckes references disclose a system of network latency tests that will test connectivity and load of a server and verify a user, then allow access to a file.

The Kenner reference does not explicitly explain file manipulation or directory access for a user.

The Midgdey reference explains a system independent of operating system for backing up and restoring directory and file information.

The Midgdey reference does not explicitly state a random sorting method in which the files may be copied into a directory can be ordered.

The Slutz reference describes a dynamic testing method for databases based upon a seed given seed value.

With regards to claim 6, the system of claim 5, wherein said first instance of said test program is configured to identify each of said first plurality of files in said first directory, wherein said first instance of said test program is configured to create a first order of said first plurality of files using a first seed value (Slutz: col. 4, lines 55-57), wherein said second instance of said test program is configured to identify each of said second plurality of files in said second directory, and wherein said second instance of said test program is configured to create a second order of said second plurality of files using a second seed value (Slutz: col. 4, lines 55-57).

Slutz further teaches that it can be used like a random number generator, similar to a sequence generator, so that the same configuration settings, the same schema, and same starting seed will reproduce it (Slutz: col. 4, lines 62-67).

Therefore if would have been obvious to a person of ordinary skill in the art at the time the invention was made to implement the system taught by Kenner, Eckes, Midgdey with random number or sequence generation based upon start seed values as taught by Slutz is great random sequences for testing that can be reproduced.

The examiner finds the claims 3, 17; 5, 19; 6, 20; 11, 22; 12, 23 to be synonymous in intention. While the examiner recognizes the distinction between a system and a method, the examiner relates these to the code, the functions, and medium for which the code works.

Therefore claims 17, 22 and 23 are rejected under 35 U. S. C. 103(a) which forms the basis for all obvious as being unpatentable over U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No 6,243,832 by Eckes et al in further view of U.S. Patent No. 6,560,648 by Dunn et al.

Claim 19 is rejected under 35 U. S. C. 103(a) as being anticipated by U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No 6,243,832 by Eckes et al in further view of U.S. Patent No. 5,485,606 by Midgdey et al.

Claim 20 is rejected under 35 U. S. C. 103(a) as being anticipated by U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No 6,243,832 by Eckes et al in further view of U.S. Patent No. 5,485,606 by Midgdey et al in further view of U. S. Patent No. 6,138,112 by Slutz.

Remarks

The Applicant Argues:

With respect to Group A, Applicant argues:

Applicant argues that the examiner has not established a prima facie case that Kenner anticipates the claimed invention because applicant can find no language in Kenner that teaches "said first client is configured to execute a first instance of a test program by said first user and a second instance of said test program by said second user substantially concurrently."

The examiner respectfully submits:

The examiner has reopened prosecution adding a second reference and establishing an obvious rejection. The second reference teaches the missing elements of the original reference.

With respect to Group B, Applicant argues:

Applicant argues that there is no language that describes user types in Kenner.

The examiner respectfully submits:

Applicant's specification teaches the reason for user types is to simulate certain accesses categorized as small, medium, and large. The Kenner reference teaches accessing different sized files but does not associate each access with a user type. The Eckes reference teaches the user will behave with different kinds and lengths of files.

With respect to Group C, Applicant argues:

Applicant argues that there is no language that describes first and second user types and populates the directories according to said types.

The examiner respectfully submits:

See argument addressed above. The combination of Midgdey teaches the limitation of claim 4. Midgdey teaches the act of populating files (Midgdey: col. 7, lines 27-39; Midgdey: col. 9, line 62 – col. 10, line 12) and Eckes teaches the different files with regard to size and kind as associated with user types (Eckes: col. 13, lines 7-11).

With respect to Group D, applicant argues:

Applicant argues that Kenner does not teach logging in the users using an operating system protocol.

The examiner respectfully submits:

The examiner can find no further definition of operating system protocol in applicant's specification or claim terminology. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant has interpreted "operating system" to be normal network operating system protocol as dictated by Applicant's own remarks IP, ICMP, SNMP and Web protocol in the absence of definition of "operating system protocol" definitions in applicant's claims and specification.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin R Bruckart whose telephone number is (703) 305-0324. The examiner can normally be reached on 8:00-5:30PM with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on (703) 308-6662. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-0324.

Benjamin R Bruckart
Examiner
Art Unit 2155

brb BRB
May 24, 2004

HOSAIN ALAM
SUPERVISORY PATENT EXAMINER